

*Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "THE INDIAN COUNCILS' ACT, 1861."*

The Council met at Poona, on Friday, the 28th August 1868, at mid-day.

The Honourable Mr. Ellis, in moving the first reading of the City Surveys and Amendment of Bombay Survey and Settlement Act Bill, said that the usual statement of objects and reasons explained briefly the reason for the introduction of this Bill into the Council. It might be well, however, to mention a few other matters connected with the provisions therein contained, as some misunderstanding appeared to prevail as to the character of the operations to be carried on under the Bill; such operations in fact were already being carried on in Ahmedabad, Surat, Broach, and Bulsar. It was in 1863, when the Gujrat Survey had completed a very great portion of its work in the Ahmedabad Zilla, that difficulties arose in regard to the assessment of certain lands in the immediate neighbourhood of Ahmedabad. Around Ahmedabad there were large plots of land, some of which were the property of private individuals, and some of which belonged to Government as the successors of the former rulers of Ahmedabad, which plots were not assessable according to the ordinary test applied to culturable land; for if that test were used, it would give the lowest possible result, inasmuch as the land was as ill suited as it could be to assessment on calculations based upon the agricultural qualities of the land. On the other hand, the lands themselves were of great value, from the fact of their being in the immediate neighbourhood of the city, and since the railway had been taken to Ahmedabad they had acquired a greater value than they ever possessed before. Under those circumstances, the Survey officers found themselves placed in difficulties which were increased from the fact that many lands that were culturable were burdened with *sant*, or assessments payable under certain conditions, when the land was cultivated. These lands originally belonged to persons who had former rights, but whose right of possession was lost, and they were allowed to retain the right over the land to the extent of those payments. There were thus many complications, as well as the fact that a great portion of the lands in the immediate neighbourhood of the city derived their value, not from their culturable qualities, but from their being situated in the immediate neighbourhood of a great city, and their consequent qualification for building purposes. Considerable discussion took place on the subject, and at the same time were brought to notice the difficulties

at Ahmedabad from the want of maps and surveys. These difficulties were of two kinds ; in the first place, it was not uncommon when some person bought a piece of land, for another individual to get up a petition, stating that the purchaser was going to build on a plot of ground which belonged to Government; and thereupon the building operations were put a stop to and the purchaser was served with a notice from the Collector. Thus building operations were stopped for years and years in the city of Ahmedabad pending inquiry. On the other hand, there was a tendency—very often found in large towns and cities—among persons otherwise highly respectable, to encroach upon lands belonging to the Government. This circumstance arose from the want of proper maps and he recollected one notable instance that occurred. It was a case in which a tradesman was owed two hundred rupees by some reduced member of an old family, who at the time was engaged as a Puttewalla. It occurred to the tradesman that as the Puttewalla was unable to pay him the debt, he might recover his money in another way, and what he did was this : he brought a suit against the Puttewalla, obtained a decree against him, and in satisfaction thereof attached a piece of land which the Puttewalla, as the price of being freed from his debt, admitted to have belonged to his (the Puttewalla's) ancestors. All the papers necessary were made out, and the land, to which neither trader or Puttewalla had the slightest right, was handed over to the trader in satisfaction of the Puttewalla's debt to him. This was only one instance of the way in which encroachments had been made. It was hardly necessary in that Council, although it might be in other quarters, for him (Mr. Ellis) to remark on the advantages of a proper record, especially in large cities, securing the rights of parties to their property; and he would not take up the time of the Council by dilating upon so obvious a point. But of course there were some persons who had objections to this kind of survey, for there were dishonest people who did not like to see an easy mode of obtaining land cut off from them, and who were sorry to see their chance of infringing on the Government's or their neighbours' land taken away. There was a class of not over-scrupulous Vakeels—he did not speak of the body of Vakeels generally—who would be sorry to see so fruitful a field of litigation closed to them. Such Vakeels were always ready to conduct cases in which fictitious claims were made, but with respect to other classes of the people he had reason to believe that the work which had already been done by the Survey officers had been anything but unpopular : for there was sufficient sense among the people in towns where the work had been carried on, to see that there were great benefits derivable from the survey. He might mention that the surveys had been carried on in immediate connection with the municipalities of towns, and that the

municipalities were bearing a large portion of the expense; and although there were minorities who objected to any expense, yet sufficient grounds had been shown for inducing the belief that a very fair return for their money would be realized, and thus a large majority would be agreeable to the expenditure which was being incurred on their behalf. The survey had been conducted, not only for municipal, but for municipal and fiscal purposes, and the municipalities and the Government were sharing the expenditure as they would share the proceeds. It would be asked what the proceeds were. The chief portion of them were to be derived from the sale of Sunnuds or title deeds, confirming holders in their possessions, and maps showing exactly the proper boundaries and limits of their property. He saw from some of the native papers that the general supposition was that the Bill was intended to disturb existing titles and to dispossess a large number of people of the properties which they had held for years. Now he had before him the Annual Progress Report of the Survey of the cities of Ahmedabad and Surat and the towns of Broach and Bulsar, which showed that it was not proposed—as he had before stated—to introduce by this Bill anything new. It was only the necessity for having a proper legal title for what had been and was being done that made an enactment indispensable; for he believed, that so far as the majority of persons were concerned, they might otherwise have gone on to the end without any legislative enactment on the subject. But of course to give legal effect to the measures taken it was necessary that a Bill should be introduced. Well, the report he referred to, recorded the results of the surveys made at Ahmedabad, Surat, Broach, and Bulsar, during last year. Taking the case of one, Ahmedabad, it appeared that last year 5,283 cases were adjudicated on by that summary mode of inquiry which it was supposed in some quarters was to be so fatal to the titles of all landowners in towns and cities. Out of the 5,283, the holders in 149 cases were offered summary settlements, which meant that of the total number 149 of those persons had to pay two annas in the rupee of what would be the full assessment of their property. In seven cases the claimants had encroached upon public roadways, and so come under the Section of the Bill which provided that recent encroachments must be vacated and taken possession of by the Collector. In one hundred of the cases the holders were decided to be liable for the full assessment. In seven cases, the occupants were found to have exposed themselves to the penalty laid down in Bombay Act I. of 1865, Section XXXIII. The bulk of 4,854 holders, out of 5,283, were confirmed in their titles, and exempted from the payment of assessment,—that was the result of the working in one city; and he might state that of those who had the option of appeal, 31 did appeal. Of the 31 cases, the decisions

of the Revenue officer were upheld in 19 cases, twelve were modified or reversed. In Surat, 3,008 decisions were passed last year. Out of that number, one case only came under the summary settlement and paid two annas in the rupee. Twenty-three of the holdings proved to be Government land and liable to assessment. In the remaining 2,984 cases the holders were confirmed in their holdings. He would propose that this report of the Revenue Survey and Assessment should be circulated to the members of the Council, and also, with His Excellency's permission, that it should be placed at the disposal of the Press, in order that it might be seen what the operations of the survey really was, so that the public might at once have opportunity of seeing how far the insinuation was true that the Survey was a system of confiscation, or, as had been alleged, another Inam Commission. There was one other point, of which a good deal had been said, that perhaps required explanation, and that was with regard to the powers given in the Bill to the Survey officers to enter houses. He had every reason to believe that all that had been said on that matter had been very great exaggeration, for he knew that up to the present time, in some of the towns and cities, there had not been a single complaint, and in others, they were very rare. That proved what he had said, that the people did not object to the survey, but on the contrary, had given it the fullest and most cordial assistance. So much was it the wish of the officers of the Survey that the feelings of the people should be consulted, that it was laid down as a rule, that no low paid subordinate should enter a house for the purposes of the survey, except with the consent of the owner; and that if he refused permission, the subordinate officer was to go to higher authority and obtain instructions. He (Mr. Ellis) need not state that it was impossible to make a survey in a thickly populated town without sometimes having to enter houses. As a rule, all the information that was required could be obtained from the measurement of the compound, but when there were no means of getting at the depth, it might be necessary to enter houses occasionally. The power to enter them, therefore, was necessary in the Bill; but it was a power—to judge from the results of the surveys hitherto—that was seldom required to be put in force. He (Mr. Ellis) did not know that at present there were any other points which he need detain the Council upon, but he would state that he proposed to proceed leisurely with the Bill, so that if any one had objections to particular clauses he might state them. He (Mr. Ellis) had taken steps to obtain for the Council, before honourable members were finally asked to determine on the Bill, some further statements in addition to those they had before them, showing the nature of the survey, and what valuable results were being arrived at, and how it was being carried on. This statement

would be in the hands of the Council before the next meeting, and if the Bill was read a first time that day he would propose, in moving for the appointment of a Select Committee, that their report should not be presented earlier than the 15th of next month, so as to give time for any one to bring before the Committee any subject that might be considered to be of importance. He begged to move that the Bill be read a first time.

*Report of the Select Committee appointed on the 28th August to report on Bill No. 3 of 1868, A Bill to remove doubts as to the applicability of (Bombay) Act I. of 1865 to Towns and Cities, and to extend the term for which Government may fix the Assessment of Lands in Towns and Cities, and to confirm existing rights of occupancy of such lands, so far as the interest of Government is concerned; and to make further provision regarding the application of (Bombay) Acts II. and VII. of 1863 and I. of 1865 to Towns and Cities, and otherwise to amend (Bombay) Act I. of 1865.*

Your Committee have carefully considered the provisions of

1. Petition from the Members of the Bombay Association.
2. Do. from do. of the Satara Association.
3. Do. from the Inhabitants of Broach.
4. Do. from the Inhabitants of Neriad, in Karia.
5. Do. from the Inhabitants of Ahmedabad.
6. Do. from the Inhabitants of Tanna District.
7. Do. from the Inhabitants of Moondha, in Kaira.
8. )
9. ) Letters from Mr. Shantaram Narayan,
10. )
11. Petition from Hormusjee Jehangeer, Proprietor of Suza Excer, Taluka Salsette.

the Bill. They have also had under consideration the Petitions noted in the margin. These Petitions have been printed, and are now before the Council. There have also been received

certain Petitions in the Vernacular unaccompanied by translations as required by No. 41 of the Council Rules.

2. Your Committee deem it unnecessary to enter into the question of the applicability of previous enactments to Towns and Cities, as they are clearly of opinion that a survey for the measurement and definition of lands in Towns and Cities is in itself beneficial and proper. And in respect to the fears entertained that the present Bill is a measure for the general assessment of such lands, your Committee would refer to the sections of the Bill relating to assessment, from which it will appear that there is no intention of assessing any lands hitherto exempt, unless they have been unauthorizedly occupied within a period of five years.

3. In considering the details of the Bill, your Committee have had special regard to the observations made by their honourable colleague, Mr. Byramjee Jejeebhoy, at the last Meeting of



Council. It will be seen from the following brief summary that the greater part of his suggestions have been adopted. Many of the recommendations contained in the memorial from the Bombay Association, and in some of the more intelligent of the Petitions, have also been adopted.

4. In the following summary the numbering of the sections refers to the Bill as amended, the numbers in brackets showing the sections in the original Bill.

5. Section II. has been added. This section has the effect of restricting the application of the Summary Settlement Acts in Towns and Cities, to the case of lands now used for cultivation only, see Section VII. .

6. In Section III. (II.) the word "assessable" has been introduced before the words "lands in Towns and Cities" in the fifth line, and other verbal alterations have been adopted, in order to make it clear that the object of this section is not to introduce any new assessment, but simply, in the case of assessments leviable under existing laws, to allow Government to fix a longer period than 30 years, the limit allowed to settlements by Section XXVIII. of (Bombay) Act I. of 1865.

7. The benefits conferred by Section V. (IV.) have been extended to all holders of land for a period of 5 years and upwards. The original section fixed the limit at 20 years. As suggested by the Honourable Mr. Byramjee Jejeebhoy, the words "owner or occupant" have been substituted for the word "occupant."

8. Section VI. (V.) has been recast to bring it into conformity with the preceding section. As it now stands no appropriation of Government or public lands of older date than 5 years will be interfered with. Government lands unauthorisedly taken possession of within 5 years will become liable to assessment for the future; and where the appropriation is shown to have taken place within 2 years, the holder will also be called upon to pay the occupancy valuation, on the same terms as his neighbours who have obtained plots of Government land after due application made to the authorities.

9. A proviso has been added to Section VII. (VI.) in order to meet the case of town lands coming under the Summary Settlement now used for cultivation, but which may eventually be used as building sites. As long as these lands are used for cultivation they cannot bear the rate appropriate to building sites. Provision has therefore been made so that the building rate may not be levied until the land is used for building purposes.

10. Section VIII. (VII.) which provides the remedy for unauthorized encroachments on the public roadway has been much

modified. Owing to a clerical error, by which Section III. was referred to in line 4 of the original Bill instead of Section IV., it appeared as if no period was fixed within which encroachments on roadways might be resumed. With this error corrected the limit of time provided by the original Bill was 20 years. It is now proposed to reduce this limit to 12 years. As regards the buildings for which compensation is to be granted, the words "of a permanent character," objected to by the Honourable Mr. Byramjee Jejeebhoy, have been omitted, and by the further omission of the words next following compensation is allowed in the case of buildings used for whatever purpose. It will be seen also that the rule regarding compensation has been relaxed in favour of verandahs and porches. A proviso has also been added to allow of arbitrators being appointed in cases where the owner of the building is not satisfied with the compensation tendered by the Collector.

11. The provisions of Section IX. (VIII.) have also been considerably modified. Unnecessary entries on lands and premises have been provided against; the term of notice before entry in the case of a dwelling-house has been extended from 24 hours to seven days; and it is provided that in entering dwelling-houses due regard shall be paid to the social and religious prejudices of the occupiers.

12. The delegation of a Collector's powers under Section XII. (XI.) is restricted in the case of Survey Officers to those of not lower rank than a Sub-Assistant Superintendent of Survey.

13. A Section has been added as No. XVIII., to provide powers to sub-divide a Talookdaree estate in Goojerat at the request of a majority of the holders. Clause 2 of this Section provides by whom the cost of subdividing Talookdaree estates shall be borne.

14. A new Section XIX. has also been added to obviate inconveniences which have been felt when the Survey Act (Bombay) I. of 1865 has been applied to alienated villages. This matter was brought to the notice of the Select Committee by Mr. Hormusjee Jehangirjee, the holder of certain alienated villages in Salsette.

15. The wording of the Title and Preamble has been altered to suit the amended provisions of the Bill.

16. The above summary of the chief points regarding which amendments are proposed, shows that very extensive alterations have been made in the details of the Bill, and that the original provisions have been very greatly relaxed in favour of the people affected thereby.

17. Your Committee recommend that the Bill be passed in its present form.

B. H. ELLIS.

S. MANSFIELD.

MUNGULDASS NUTHOOBHOOY.

2nd October 1868.

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The Honourable Mr. Ellis said that as the provisions of this Bill had been very much modified in Committee, he proposed that an early day should not be fixed for the further consideration of the Bill, with the view that the modifications which had been made, might become fully known, and that the Bill in its present form might have a sufficiently wide circulation. But as there would be this delay, he would beg permission, in stating the course which he proposed to pursue, to offer a few observations upon certain points in respect to which considerable misapprehension appeared to exist; and he would do so, without troubling the Council with those points that would more properly be dealt with on the occasion of the second reading. But as there would be some delay, he would merely submit a few remarks in reference to the misunderstanding as to the intentions of the framers of the Bill. In the first place there had been some misapprehension as to the principle of the Bill, but it was hardly necessary to deal with that now, as a proper opportunity for explaining what that principle really was, would be afforded him in moving the second reading of the Bill. But in one very prominent point of detail, apprehension had been excited in the minds of the people of the City of Bombay, lest the provisions of the Bill should be made applicable to them. Now he would mention that it never was intended to make the Bill applicable to Bombay, for in the first place, there existed already under the Bombay Municipal Act of 1865, ample powers for carrying out the field portion of the survey of the City of Bombay, and in the second place, the Regulations on which this Bill was based were not applicable to that city. It was never intended therefore to apply this Bill to Bombay; but in order to do away with the misapprehension on that point, the Select Committee had inserted a clause in the Bill, declaring specifically that the Act should not apply to the City of Bombay. Then again there was some misunderstanding as to the second Section of the Bill, which as originally worded was one intended solely for the advantage of the holders of lands in towns and cities, but the Section was misconstrued so as to lead to the belief that the object was to